



The Benefits of Decriminalizing Abortion

By Joyce Arthur and Jane Cawthorne

Abortion Rights Coalition of Canada (www.arcc-cdac.ca)

In the 25 years since our Supreme Court struck down Canada's abortion law, our country's experience is proof that laws against abortion are unnecessary. A full generation of Canadians has lived without a law and we are better off because of it.

Canada is the first country in the world to prove that abortion care can be ethically and effectively managed as part of standard healthcare practice, without being controlled by any civil or criminal law.

Canada's success is a role model to the world.

History: Previous Laws and One Doctor's Civil Disobedience

In the 1988 Morgentaler decision, the Supreme Court of Canada ruled that our criminal law on abortion violated the constitutional right to "security of the person" under our *Charter of Rights and Freedoms* (Canada's constitution). One justice, Bertha Wilson, also found that women's rights to life, liberty, conscience, privacy, and autonomy were compromised by the law. She stated that every individual must be guaranteed "a degree of personal autonomy over important decisions intimately affecting his or her private life. Liberty in a free and democratic society does not require the state to approve such decisions but it does require the state to respect them."

The law that had been struck down had passed in 1969; it was a more liberal law that replaced a strict ban on abortion. The 1969 law required women to apply for permission from a hospital committee, which would decide if a woman's health or life was at risk. The law obstructed access for women because most hospitals did not even establish committees, while some that did refused to approve most or all applications. In practice, access to abortion was spotty and unfair. Long delays at hospitals also increased the health risks for many women. Free-standing abortion clinics outside of hospitals were illegal.



Dr. Henry Morgentaler began performing safe – but illegal – abortions in his private office in Montreal in 1968, a year before the new law passed. He understood that women could be trusted to make good decisions about their own bodies, pregnancies, families, and lives. In 1967, he told a Parliamentary committee that women had a right to abortion on request without having to state a reason – a very radical position at that time. After the 1969 law passed, he continued to break the law because he knew that sending women to a committee for approval was a discriminatory barrier that increased medical risks to women. Dr. Morgentaler also knew that doctors could be trusted to practice medicine safely and effectively without the threat of legal sanctions.

During his 20-year battle, Dr. Morgentaler challenged the law by opening illegal abortion clinics in three cities and inviting media coverage of his safe abortion services. Police raided the clinics several times, resulting in repeated arrests and trials that eventually led to the historic Supreme Court victory on January 28, 1988.

Reaping the Benefits of Decriminalization

The evidence now vindicates Dr. Morgentaler’s perspective and Canada’s legal position. After 25 years with no legal restrictions on abortion whatsoever:

- Doctors and women handle abortion care responsibly.
- Abortion rates are fairly low and have steadily declined since 1997.
- Almost all abortions occur early in pregnancy.
- Maternal deaths and complications from abortion are very low.
- Abortion care is fully funded and integrated into the healthcare system (improving accessibility and safety).
- Further legal precedents have advanced women’s equality by affirming an unrestricted right to abortion.
- Public support for abortion rights has increased.

Responsible abortion care: Since 1988, the Canadian Medical Association (CMA) has successfully managed abortion just as it does for every other medical procedure – by applying policy and encouraging medical discretion for doctors, subject to a standard code of ethics. Doctors abide by CMA policy and guidelines, and follow best medical practices based on validated research and clinical protocols. Criminal laws are inappropriate and harmful in medicine because they constrain care and negatively impact the health of patients.

Low and declining abortion rates: Canadian women had 93,755 abortions in 2009, the last year for which reliable numbers are available. This translates to an annual abortion rate of 14 per 1000 women of childbearing age, approaching the lowest rates in the world – about 12 per 1000 women in western Europe. Incidentally, the annual abortion rate in the United States has also declined significantly in the last decade, and now sits at 15 abortions per 1000 women of childbearing age.

Although western European countries and the U.S. enforce various legal restrictions on abortion care, their declines in abortion rates are not attributed to the effect of laws, but largely to more effective and increased use of contraceptives. The evidence is clear that contraception and family planning services are key to reducing unintended pregnancy, which is the main cause of abortion. In countries where abortion is legal and contraceptive use improves over time, abortion rates decline predictably and often dramatically. This pattern has repeated itself countless times around the world, including in Canada, where our abortion rate has declined by at least 14% since 1997, and by 29% amongst teenagers.

Earlier abortions: At least 90% of abortions in Canada are now performed on request in the first 12 weeks. The procedure is very safe and 97.6% of terminations (in hospitals) have no complications. Less than 2% of abortions occur after 20 weeks (again in hospitals only), and these are performed only in cases of severe fetal anomaly or

under compelling maternal life or health circumstances. A similar situation exists in every country independently of any laws – the majority of women seeking abortions will present early, while a small number of women will always need later abortions because of exceptional circumstances.

Low complication and death rate: About half of abortions are now done in private clinics in Canada, virtually all by 16 weeks of pregnancy. Since early abortions are safer than later abortions, and hospitals handle the later and more complex cases, our hospital statistics likely overestimate the proportion of later abortions, as well as the rate of maternal deaths and complications from abortion. Statistics Canada reported that in 1995, less than 1% of abortions in Canada resulted in any complication at all, whether minor or more serious. Further, Canada has one of the world's lowest maternal mortality rates from legal abortion. Between 1976 and 1994, the mortality rate was estimated to be 0.1 deaths for every 100,000 abortions – about one every ten years – compared to a rate of 0.7 in the U.S (from 1988 to 1997). Maternal death from legal abortion remains virtually unheard of in Canada today.

Funding and integration into healthcare system: Abortion care has become better integrated into the Canadian healthcare system, partly because it was already being done in hospitals and funded as “therapeutic abortion” before 1988. However, between 1988 and 2006, the pro-choice movement successfully challenged provincial governments to also fund all procedures done at private clinics. Today, only the province of New Brunswick refuses to pay for abortions at one private clinic, in defiance of federal law. (The Canada Health Act guarantees funding and equitable access for all “medically required” treatment, which includes abortion.) Full government funding for abortion is essential to protect women from discrimination, facilitate early access, ensure acceptable standards of care, and prevent the service from becoming marginalized or further stigmatized.

Further legal precedents: Subsequent court rulings have solidified the Morgentaler decision, which has been widely cited in other rulings due to its advancement of women's constitutional rights. The Supreme Court appears to have adopted Justice Wilson's broader approach to such rights, recognizing for example that the right to liberty includes the autonomy to make decisions of fundamental personal importance. Our federal Criminal Code states that the legal status of “human being” accrues only after exiting the birth canal alive, a definition validated by several Supreme Court decisions that established that fetuses are not legal persons and that women's rights must prevail. In a 1999 decision, Dobson v. Dobson, the Supreme Court ruled that: “A pregnant woman and her foetus are physically one, in the sense that she carries her foetus within herself. ... The physical unity of pregnant woman and foetus means that the imposition of a duty of care would amount to a profound compromise of her privacy and autonomy.”

Increased public support: Strong public support exists for abortion rights in Canada, despite lingering social stigma against abortion that is continually reinforced by anti-choice propaganda. Even though half of Canadians appear to want some restrictions on abortion, this anti-choice article on polling shows a gradual increase in pro-choice support since the 1980's. A 2012 poll revealed that 49% of Canadians support abortion on request at any time, while only 6% want a total ban. (In comparison, 30% of Americans want it fully legal while 15% prefer a total ban.)

(Note: See page 5 for a list of “Global Harms of Criminalizing Abortion” and “Global Benefits of Decriminalizing Abortion.”)

Having No Laws Is Not Enough

Of course, the lack of restrictive laws alone does not guarantee access or availability of services. Canada still has problems with access because of ongoing abortion stigma, inadequate training in medical schools, reluctance of politicians to implement improvements, and simple geography – abortion is much easier to access in larger cities than in Canada's vast rural areas and North, where women often must travel to find abortion care. However, another benefit of decriminalization is that we have been able to focus our time on addressing these issues instead of struggling against restrictive laws.

Key to understanding the incidence of abortion is that it can never be eliminated. We will never live in a perfect world – contraception is far from 100% effective, people are human, and continuing inequality means that disadvantaged women will experience higher rates of unintended pregnancy. The lowest possible abortion rates – the rates of about 6 to 7 per 1000 women of childbearing age that are now being achieved by [Switzerland](#) and [Germany](#) – require a sustained commitment and dedicated resources in areas such as family planning and reproductive health services, comprehensive sex education, and doctor training. The other key element in reducing abortion is to advance women’s status and equality so they are more empowered to avoid unintended pregnancy.

Vigilance is also required due to the endless tenacity of the anti-choice movement. Since 1988, Canada has seen 45 attempts to recriminalize or restrict abortion through the introduction of Private Members Bills or Motions in Parliament. Not one has passed, and nor is one likely to pass. Despite the loud voices and campaigning power of anti-choice activists, women’s rights are well established in Canada and sexual and reproductive health is understood as a vital facet of overall health.

The Moral High Road – Decriminalizing Abortion

The rest of the world is catching up to Canada. Two Australian states have also successfully decriminalized abortion in recent years. And in 2011, a groundbreaking report to the United Nations boldly called on all states to decriminalize abortion. The UN’s Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health described laws restricting abortion as an abuse of state power. Such restrictions “infringe human dignity by restricting the freedoms to which individuals are entitled under the right to health, particularly in respect of decision-making and bodily integrity.”

Looking at Canada, concerns that other countries may have about eliminating punitive laws on abortion are clearly unfounded. Even with our remaining issues, our outcomes are exemplary. We can all thank Henry Morgentaler for that.

The Canadian pro-choice movement will do all it can to ensure that Canada never goes back, and we encourage other countries to embark upon a similar journey. When women can make their own reproductive decisions without interference from the state, society takes the moral high road – one that saves lives, raises women’s status and potential, and ultimately benefits everyone.

Key Sources and Further Reading

Guttmacher Institute. 2012. *In Brief Fact Sheet: Facts on Induced Abortion Worldwide.*

Guttmacher Institute. May 10, 2012. *Legalization Alone Does Not Guarantee Availability of Safe Abortion Services.*

Grover, Anand. August 3, 2011. *Interim Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.* A/66/254. United Nations General Assembly.

University of Ottawa. Nov 8, 2012. *Facts and Figures on Abortion.* Society, the Individual and Medicine.

Furedi, Ann. December 20, 2010. *A Moral Defence of Late Abortion.* *Spiked.*

Abortion Rights Coalition of Canada:

Canada Does Not Need an Abortion Law. October 2008.

The Case for Repealing Anti-Abortion Laws. January 2009.

Criminalized Abortion Overshadows Good News of Reduced Unsafe Abortion Deaths. December 2010. *RH Reality Check.*

Why Abortion Care Must Be Fully Funded. October 2012.

Yes, Legalizing Abortion Does Save Women’s Lives. March 2010. *Saskatoon Star Phoenix.*

Global Harms of Criminalizing Abortion

There isn't a shred of evidence that restrictions on abortion are effective or helpful for women or society. In fact, they are unjust, useless, and harmful – often extremely so. The sheer diversity of abortion laws around the world proves they have nothing to do with women's real medical needs, and instead are politically-motivated.

Among their demonstrated negative effects and consequences, abortion laws:

- Fail to dissuade women from abortion
- Subject women to unsafe abortion from unskilled or unscrupulous practitioners
- Kill and injure large numbers of women
- Turn women into criminals, or state-controlled baby-making machines
- Prioritize ideology and religious doctrine above peoples' lives and health
- Disproportionately impact disadvantaged women, such as the poor, young, immigrant, indigenous, and uneducated
- Institutionalize the stigma of abortion
- Discriminate against women and violate their equality rights (since anti-abortion laws do not apply to men)
- Foster prejudice against women who need an abortion
- Reject women's moral reasoning, and distrust them to make their own decisions
- Punish women for having sex for pleasure, and for "shirking" motherhood
- Reduce access to safe abortion and impede medical care
- Increase the medical risks of legal abortion by delaying or obstructing care
- Marginalize abortion care and providers outside the healthcare system
- Block or hamper medical research into improved abortion care and methods
- Disrespect professional medical judgments made in the patient's best interests
- Interfere in the confidential doctor/patient relationship
- Put a chill on healthcare delivery by threatening healthcare workers with prosecution
- Criminalize and imprison healthcare workers for trying to help or save patients
- Turn women's healthcare into a political target for legislators and the anti-choice movement
- Contribute to making clinics and providers victims of harassment and terrorism, including witch hunts, picketing, vandalism, arsons, bombs, and murders

Global Benefits of Decriminalizing Abortion

Laws against abortion do not reduce the number of abortions, nor do they make women safer. Abortion rates are highest and maternal health outcomes are poorest where laws are restrictive and contraception is difficult to access. In Africa where the vast majority of abortions are illegal, the abortion rate is 29 per 1000 women of childbearing age (compared to 12 per 1000 in western Europe). Over half of abortion deaths occur in Africa – 29,000 out of 47,000 globally. Unsafe abortion results in 13% of maternal deaths worldwide and about 8.5 million complications requiring medical care, according to the World Health Organization.

It's important to remember that criminal abortion bans were first liberalized in most countries for public health reasons, when it became apparent that women could not be stopped from seeking out abortions, regardless of any law or risk to their lives. It was often doctors who fought hardest for legalization, because they were the ones who had to face the daily carnage. For this reason and others, legalized abortion improves the survival and health of women, as well as that of their children and families. As shown in the United States after the Roe v. Wade decision legalized abortion in 1973, the benefits included:

- A dramatic decline in abortion deaths and complications
- Increased proportion of abortions early in pregnancy when they are safer
- A reduced incidence of major birth defects because of the availability of amniocentesis and legal abortion
- A decline in birthrates and corresponding health improvements for women who risk the most negative consequences of unintended childbearing (teenagers, women over 35, and unmarried women)
- A lower infant mortality rate and healthier infants
- Increased psychological, social, and economic well-being for mothers and their wanted children

Given these significant benefits, we can expect that when countries retain some limits on abortion (or introduce new ones) after liberalizing their laws, the main effect will be to curtail the advantages for women and society. Indeed, this may account for some of the maternal health disparities between Canada and the U.S. The overall death rate from pregnancy-related causes is 17 deaths per 100,000 women in the U.S., compared to 7 deaths per 100,000 women in Canada. This difference is likely caused in part by bans on abortion funding and legal barriers to access, because many poor and disadvantaged women in the U.S. suffer increased risks to their health and lives when they are forced to carry an unwanted pregnancy to term.